

**ASSEMBLY BILL**

**No. 1268**

---

**Introduced by Assembly Member Oropeza**

February 22, 2005

---

An act to amend Section 651 of the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, as introduced, Oropeza. Dentistry.

Existing law provides that it is unlawful for a healing arts licensee to provide, publish, or advertise false, fraudulent, misleading, or deceptive statements, photographs, or other images in order to induce the provision of services or the rendering of products relating to a professional practice or business for which he or she is licensed and makes the violation of these provisions a misdemeanor. Existing law prohibits a dentist from representing to the public or advertising accreditation either in a specialty area of practice or by a board not meeting specified criteria unless the dentist has attained membership in, or been credentialed by, an accrediting organization recognized by the board as a bona fide organization for the area of dental practice. Existing law sets forth membership or credentialing requirements that an organization must have in order to be recognized as a bona fide organization.

This bill would delete this prohibition on dentist representations. The bill would instead require a dentist, in an announcement, solicitation, or advertisement that announces a practice emphasis in an area of dental practice not recognized as a specialty by the American Dental Association, to incorporate in a clearly distinguishable manner that the announced area of dental practice is not recognized as a specialty area by the American Dental Association and, if the dentist

desires to reference an organization that does officially recognize the practice area, to state that the referenced organization is not recognized as a bona fide specialty accrediting organization by the American Dental Association.

Because the bill would specify additional provisions regarding the advertising practices of dentists, the violation of which would be a misdemeanor, it would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 651 of the Business and Professions
- 2 Code is amended to read:
- 3 651. (a) It is unlawful for any person licensed under this
- 4 division or under any initiative act referred to in this division to
- 5 disseminate or cause to be disseminated any form of public
- 6 communication containing a false, fraudulent, misleading, or
- 7 deceptive statement, claim, or image for the purpose of or likely
- 8 to induce, directly or indirectly, the rendering of professional
- 9 services or furnishing of products in connection with the
- 10 professional practice or business for which he or she is licensed.
- 11 A “public communication” as used in this section includes, but is
- 12 not limited to, communication by means of mail, television,
- 13 radio, motion picture, newspaper, book, list or directory of
- 14 healing arts practitioners, Internet, or other electronic
- 15 communication.
- 16 (b) A false, fraudulent, misleading, or deceptive statement,
- 17 claim, or image includes a statement or claim that does any of the
- 18 following:
- 19 (1) Contains a misrepresentation of fact.
- 20 (2) Is likely to mislead or deceive because of a failure to
- 21 disclose material facts.

1 (3) (A) Is intended or is likely to create false or unjustified  
2 expectations of favorable results, including the use of any  
3 photograph or other image that does not accurately depict the  
4 results of the procedure being advertised or that has been altered  
5 in any manner from the image of the actual subject depicted in  
6 the photograph or image.

7 (B) Use of any photograph or other image of a model without  
8 clearly stating in a prominent location in easily readable type the  
9 fact that the photograph or image is of a model is a violation of  
10 subdivision (a). For purposes of this paragraph, a model is  
11 anyone other than an actual patient, who has undergone the  
12 procedure being advertised, of the licensee who is advertising for  
13 his or her services.

14 (C) Use of any photograph or other image of an actual patient  
15 that depicts or purports to depict the results of any procedure, or  
16 presents “before” and “after” views of a patient, without  
17 specifying in a prominent location in easily readable type size  
18 what procedures were performed on that patient is a violation of  
19 subdivision (a). Any “before” and “after” views (i) shall be  
20 comparable in presentation so that the results are not distorted by  
21 favorable poses, lighting, or other features of presentation, and  
22 (ii) shall contain a statement that the same “before” and “after”  
23 results may not occur for all patients.

24 (4) Relates to fees, other than a standard consultation fee or a  
25 range of fees for specific types of services, without fully and  
26 specifically disclosing all variables and other material factors.

27 (5) Contains other representations or implications that in  
28 reasonable probability will cause an ordinarily prudent person to  
29 misunderstand or be deceived.

30 (6) Makes a claim either of professional superiority or of  
31 performing services in a superior manner, unless that claim is  
32 relevant to the service being performed and can be substantiated  
33 with objective scientific evidence.

34 (7) Makes a scientific claim that cannot be substantiated by  
35 reliable, peer reviewed, published scientific studies.

36 (8) Includes any statement, endorsement, or testimonial that is  
37 likely to mislead or deceive because of a failure to disclose  
38 material facts.

39 (c) Any price advertisement shall be exact, without the use of  
40 phrases, including, but not limited to, “as low as,” “and up,”

1 “lowest prices,” or words or phrases of similar import. Any  
2 advertisement that refers to services, or costs for services, and  
3 that uses words of comparison shall be based on verifiable data  
4 substantiating the comparison. Any person so advertising shall be  
5 prepared to provide information sufficient to establish the  
6 accuracy of that comparison. Price advertising shall not be  
7 fraudulent, deceitful, or misleading, including statements or  
8 advertisements of bait, discount, premiums, gifts, or any  
9 statements of a similar nature. In connection with price  
10 advertising, the price for each product or service shall be clearly  
11 identifiable. The price advertised for products shall include  
12 charges for any related professional services, including  
13 dispensing and fitting services, unless the advertisement  
14 specifically and clearly indicates otherwise.

15 (d) Any person so licensed shall not compensate or give  
16 anything of value to a representative of the press, radio,  
17 television, or other communication medium in anticipation of, or  
18 in return for, professional publicity unless the fact of  
19 compensation is made known in that publicity.

20 (e) Any person so licensed may not use any professional card,  
21 professional announcement card, office sign, letterhead,  
22 telephone directory listing, medical list, medical directory listing,  
23 or a similar professional notice or device if it includes a  
24 statement or claim that is false, fraudulent, misleading, or  
25 deceptive within the meaning of subdivision (b).

26 (f) Any person so licensed who violates this section is guilty  
27 of a misdemeanor. A bona fide mistake of fact shall be a defense  
28 to this subdivision, but only to this subdivision.

29 (g) Any violation of this section by a person so licensed shall  
30 constitute good cause for revocation or suspension of his or her  
31 license or other disciplinary action.

32 (h) Advertising by any person so licensed may include the  
33 following:

34 (1) A statement of the name of the practitioner.

35 (2) A statement of addresses and telephone numbers of the  
36 offices maintained by the practitioner.

37 (3) A statement of office hours regularly maintained by the  
38 practitioner.

39 (4) A statement of languages, other than English, fluently  
40 spoken by the practitioner or a person in the practitioner’s office.

1 (5) (A) A statement that the practitioner is certified by a  
2 private or public board or agency or a statement that the  
3 practitioner limits his or her practice to specific fields.

4 (i) For the purposes of this section, a dentist licensed under  
5 Chapter 4 (commencing with Section 1600) may not hold himself  
6 or herself out as a specialist, or advertise membership in or  
7 specialty recognition by an accrediting organization, unless the  
8 practitioner has completed a specialty education program  
9 approved by the American Dental Association and the  
10 Commission on Dental Accreditation, is eligible for examination  
11 by a national specialty board recognized by the American Dental  
12 Association, or is a diplomate of a national specialty board  
13 recognized by the American Dental Association.

14 ~~(ii) A dentist licensed under Chapter 4 (commencing with~~  
15 ~~Section 1600) shall not represent to the public or advertise~~  
16 ~~accreditation either in a specialty area of practice or by a board~~  
17 ~~not meeting the requirements of clause (i) unless the dentist has~~  
18 ~~attained membership in or otherwise been credentialed by an~~  
19 ~~accrediting organization that is recognized by the board as a bona~~  
20 ~~fide organization for that area of dental practice. In order to be~~  
21 ~~recognized by the board as a bona fide accrediting organization~~  
22 ~~for a specific area of dental practice other than a specialty area of~~  
23 ~~dentistry authorized under clause (i), the organization shall~~  
24 ~~condition membership or credentialing of its members upon all of~~  
25 ~~the following:~~

26 ~~(I) Successful completion of a formal, full-time advanced~~  
27 ~~education program that is affiliated with or sponsored by a~~  
28 ~~university based dental school and is beyond the dental degree at~~  
29 ~~a graduate or postgraduate level.~~

30 ~~(II) Prior didactic training and clinical experience in the~~  
31 ~~specific area of dentistry that is greater than that of other dentists.~~

32 ~~(III) Successful completion of oral and written examinations~~  
33 ~~based on psychometric principles.~~

34 ~~(iii) Notwithstanding the requirements of clauses (i) and (ii), a~~  
35 ~~dentist who lacks membership in or certification, diplomate~~  
36 ~~status, other similar credentials, or completed advanced training~~  
37 ~~approved as bona fide either by an American Dental Association~~  
38 ~~recognized accrediting organization or by the board, may~~  
39 ~~announce a practice emphasis in any other area of dental practice~~  
40 ~~only if the dentist incorporates in capital letters or some other~~

~~manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.~~

*(ii) A dentist who does not meet the requirements of clause (i), may announce a practice emphasis in an area recognized as a specialty by the American Dental Association only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.*

*(iii) A dentist may announce a practice emphasis in an area of dental practice not recognized as a specialty by the American Dental Association only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that the announced area of dental practice is not recognized as a specialty area by the American Dental Association. If the area of dental practice is officially recognized by an organization that the dentist desires to acknowledge or otherwise reference in the dentist's announcement, solicitation, or advertisement, the announcement, solicitation, or advertisement shall also state prominently that the referenced organization is not recognized as a bona fide specialty accrediting organization by the American Dental Association.*

*(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.*

*(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate*

1 training program that provides complete training in that specialty  
2 or subspecialty. A physician and surgeon licensed under Chapter  
3 5 (commencing with Section 2000) by the Medical Board of  
4 California who is certified by an organization other than a board  
5 or association referred to in clause (i), (ii), or (iii) shall not use  
6 the term “board certified” in reference to that certification, unless  
7 the physician and surgeon is also licensed under Chapter 4  
8 (commencing with Section 1600) and the use of the term “board  
9 certified” in reference to that certification is in accordance with  
10 subparagraph (A). A physician and surgeon licensed under  
11 Chapter 5 (commencing with Section 2000) by the Medical  
12 Board of California who is certified by a board or association  
13 referred to in clause (i), (ii), or (iii) shall not use the term “board  
14 certified” unless the full name of the certifying board is also used  
15 and given comparable prominence with the term “board  
16 certified” in the statement.

17 For purposes of this subparagraph, a “multidisciplinary board  
18 or association” means an educational certifying body that has a  
19 psychometrically valid testing process, as determined by the  
20 Medical Board of California, for certifying medical doctors and  
21 other health care professionals that is based on the applicant’s  
22 education, training, and experience.

23 For purposes of the term “board certified,” as used in this  
24 subparagraph, the terms “board” and “association” mean an  
25 organization that is an American Board of Medical Specialties  
26 member board, an organization with equivalent requirements  
27 approved by a physician and surgeon’s licensing board, or an  
28 organization with an Accreditation Council for Graduate Medical  
29 Education approved postgraduate training program that provides  
30 complete training in a specialty or subspecialty.

31 The Medical Board of California shall adopt regulations to  
32 establish and collect a reasonable fee from each board or  
33 association applying for recognition pursuant to this  
34 subparagraph. The fee shall not exceed the cost of administering  
35 this subparagraph. Notwithstanding Section 2 of Chapter 1660 of  
36 the Statutes of 1990, this subparagraph shall become operative  
37 July 1, 1993. However, an administrative agency or accrediting  
38 organization may take any action contemplated by this  
39 subparagraph relating to the establishment or approval of  
40 specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” unless the full name of the certifying board is also used and given comparable prominence with the term “board certified” in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” in reference to that certification.

For purposes of this subparagraph, a “multidisciplinary board or association” means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant’s education, training, and experience. For purposes of the term “board certified,” as used in this subparagraph, the terms “board” and “association” mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each



1 board or association applying for recognition pursuant to this  
2 subparagraph, to be deposited in the State Treasury in the  
3 Podiatry Fund, pursuant to Section 2499. The fee shall not  
4 exceed the cost of administering this subparagraph.

5 (6) A statement that the practitioner provides services under a  
6 specified private or public insurance plan or health care plan.

7 (7) A statement of names of schools and postgraduate clinical  
8 training programs from which the practitioner has graduated,  
9 together with the degrees received.

10 (8) A statement of publications authored by the practitioner.

11 (9) A statement of teaching positions currently or formerly  
12 held by the practitioner, together with pertinent dates.

13 (10) A statement of his or her affiliations with hospitals or  
14 clinics.

15 (11) A statement of the charges or fees for services or  
16 commodities offered by the practitioner.

17 (12) A statement that the practitioner regularly accepts  
18 installment payments of fees.

19 (13) Otherwise lawful images of a practitioner, his or her  
20 physical facilities, or of a commodity to be advertised.

21 (14) A statement of the manufacturer, designer, style, make,  
22 trade name, brand name, color, size, or type of commodities  
23 advertised.

24 (15) An advertisement of a registered dispensing optician may  
25 include statements in addition to those specified in paragraphs (1)  
26 to (14), inclusive, provided that any statement shall not violate  
27 subdivision (a), (b), (c), or (e) or any other section of this code.

28 (16) A statement, or statements, providing public health  
29 information encouraging preventative or corrective care.

30 (17) Any other item of factual information that is not false,  
31 fraudulent, misleading, or likely to deceive.

32 (i) Each of the healing arts boards and examining committees  
33 within Division 2 shall adopt appropriate regulations to enforce  
34 this section in accordance with Chapter 3.5 (commencing with  
35 Section 11340) of Part 1 of Division 3 of Title 2 of the  
36 Government Code.

37 Each of the healing arts boards and committees and examining  
38 committees within Division 2 shall, by regulation, define those  
39 efficacious services to be advertised by businesses or professions  
40 under their jurisdiction for the purpose of determining whether

1 advertisements are false or misleading. Until a definition for that  
2 service has been issued, no advertisement for that service shall be  
3 disseminated. However, if a definition of a service has not been  
4 issued by a board or committee within 120 days of receipt of a  
5 request from a licensee, all those holding the license may  
6 advertise the service. Those boards and committees shall adopt or  
7 modify regulations defining what services may be advertised, the  
8 manner in which defined services may be advertised, and  
9 restricting advertising that would promote the inappropriate or  
10 excessive use of health services or commodities. A board or  
11 committee shall not, by regulation, unreasonably prevent truthful,  
12 nondeceptive price or otherwise lawful forms of advertising of  
13 services or commodities, by either outright prohibition or  
14 imposition of onerous disclosure requirements. However, any  
15 member of a board or committee acting in good faith in the  
16 adoption or enforcement of any regulation shall be deemed to be  
17 acting as an agent of the state.

18 (j) The Attorney General shall commence legal proceedings in  
19 the appropriate forum to enjoin advertisements disseminated or  
20 about to be disseminated in violation of this section and seek  
21 other appropriate relief to enforce this section. Notwithstanding  
22 any other provision of law, the costs of enforcing this section to  
23 the respective licensing boards or committees may be awarded  
24 against any licensee found to be in violation of any provision of  
25 this section. This shall not diminish the power of district  
26 attorneys, county counsels, or city attorneys pursuant to existing  
27 law to seek appropriate relief.

28 (k) A physician and surgeon or doctor of podiatric medicine  
29 licensed pursuant to Chapter 5 (commencing with Section 2000)  
30 by the Medical Board of California who knowingly and  
31 intentionally violates this section may be cited and assessed an  
32 administrative fine not to exceed ten thousand dollars (\$10,000)  
33 per event. Section 125.9 shall govern the issuance of this citation  
34 and fine except that the fine limitations prescribed in paragraph  
35 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
36 under this subdivision.

37 SEC. 2. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the  
2 penalty for a crime or infraction, within the meaning of Section  
3 17556 of the Government Code, or changes the definition of a  
4 crime within the meaning of Section 6 of Article XIII B of the  
5 California Constitution.

O